

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 02-0104P

Use Tax

Calendar Years 1998, 1999, and 2000

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ISSUE(S)

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer is a manufacturer of shipping containers. At audit, it was determined that the taxpayer failed to self assess and remit use tax for clearly taxable items such as maintenance supplies, janitorial supplies, banners, switches, and other miscellaneous items.

I. Tax Administration – Penalty

DISCUSSION

Taxpayer protests the penalty assessed and states that the tax due represents a modest amount in comparison to the total tax liability and it has always made a concerted effort to be in compliance.

45 IAC 15-11-2(b) states, "Negligence, on behalf of the taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

The taxpayer failed to remit sales tax on twenty-two percent (22%) of its taxable purchases and has not provided reasonable cause to allow the department to waive the penalty.

FINDING

Taxpayer's protest is denied.

DW/RAW/JMS/dw 020703